

Subchapter 1

Organization

20.25.101 ORGANIZATION OF THE BOARD (1) The board is a quasi-judicial body and is administratively attached to the Department of Corrections. The board consists of seven members who are appointed by the governor; three members and four auxiliary members. The board shall administer executive clemency and parole processes and procedures, and ensure the effective application of and improvements to the clemency and release system as well as of the laws upon which they are based.

(2) The board chair is specifically designated by the governor and the vice-chair is designated by a majority vote of the board. The vice-chair assumes the duties of the chair when the chair is not present. Individual board members shall, prior to hearing a case, disclose any conflict of interest and recuse themselves in cases in which it has been determined that a conflict of interest is clearly identified.

(3) The board's main office is located in Deer Lodge, Montana.

(4) The board, by majority vote of all members, hires an executive director, who oversees the day to day financial, administrative, and personnel policies and procedures of the board. The executive director also coordinates board member, hearing panel, and board staff work schedules, and fulfills other duties as assigned by the board chair. The executive director hires board staff as deemed necessary and as provided by legislative appropriation. Board administrative personnel represent the board in official board actions. All board personnel are state employees with all the benefits and protections afforded state employees.

(5) The board will meet at least monthly to conduct hearings and transact its business. The board may conduct meetings and hearings at any location suitable for that purpose.

(6) The board chair or designee, in consultation with the board members:

(a) assigns hearing panels to conduct parole hearings, revocation hearings, rescission hearings, administrative parole reviews, reconsideration of previous parole decisions, and to make final decisions and recommendations in matters of executive clemency;

(b) requests out-of-state adult correctional releasing authorities to conduct courtesy hearings on behalf of the board; and

(c) designates presiding hearing panel members.

(7) The vote of at least a majority of all members of the board is required to adopt any change in established rule, policy, and/or procedure, unless otherwise provided by law.

(8) The board will set hearing and meeting dates suitably in advance and publish them on the board's official web site, but the dates are subject to change.

(9) The board executive director will maintain, review, and update at least annually a written description and an organizational chart that accurately reflects the structure of authority, responsibility, and accountability within the board. (History: 46-23-218, MCA; IMP, 2-15-121, 2-15-124, 2-15-2302, 46-23-104, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; AMD, 1999 MAR p. 290, Eff. 2/12/99; AMD, 2010 MAR p. 2816, Eff. 12/10/10.)

20.25.102 BOARD TRAINING (1) All board members shall receive training that addresses the following American Indian issues:

- (a) the cultures and problems of Montana tribes and reservations;
- (b) statistical and comparative data regarding correctional populations;
- (c) distinctions between urban and reservation populations; and
- (d) federal, state, and local community services available to paroled or discharged American Indian offenders.

(2) A board member who has not received training regarding American Indian issues may not hear or decide American Indian cases until the member has completed the training.

(3) Board members may attend nationally recognized correctional training or a comparable program for parole board members.

(4) Before participating on a hearing panel, a new board member must receive orientation from board staff regarding:

- (a) state and federal law and rules pertinent to board operations;
- (b) offender pathology, treatment, and supervision; and
- (c) Department of Corrections' organization, programs, and policy.

(5) The executive director in consultation with the board chair will develop, evaluate, and update training curricula annually based on the board's needs.

(History: 46-23-218, MCA; IMP, 46-23-218, MCA; NEW, 2004 MAR p. 1621, Eff. 7/23/04; AMD, 2010 MAR p. 2816, Eff. 12/10/10.)

20.25.103 DISSEMINATION OF INFORMATION (1) As a public agency, all board records including any audio/video recordings are public. All board records are subject to disclosure except in cases in which the individual right of privacy clearly exceeds the merits of public disclosure, and in cases in which statute makes the record confidential.

(2) An individual will have a right of privacy if the person has a reasonable expectation of privacy in the material and society is willing to recognize that expectation as reasonable.

(3) The courts have ruled that the rights society recognizes as reasonable include but are not limited to:

- (a) information that, if released, would create a risk of physical harm to a person;
- (b) information that, if released, would create a safety or security risk to a correctional facility;
- (c) personal medical information; and
- (d) personal personnel information.

(4) When someone requests board records, the board's executive director or designee will conduct an analysis of the requested material and determine whether, in the executive director's opinion, any information contains an individual privacy interest that clearly exceeds the merits of public disclosure.

(5) The executive director or the board may assert a claim of individual privacy on behalf of an individual if the board executive director believes requested information contains a reasonable privacy interest that exceeds the merits of public disclosure. The board executive director will attempt to notify the individual to advise the individual of the request for information and ascertain if the individual agrees with or objects to the release of the information. If notification is not possible, the board executive director will independently weigh the privacy interest against the public's right to know to determine if the board should release the information.

(6) The board may not withhold from public scrutiny any more information than is required to protect an individual privacy interest.

(7) Whenever a crime victim asserts an individual privacy interest, the board may not disseminate to the public the name, address, telephone number, or place of employment of the victim or a member of the victim's family unless otherwise required by law.

(8) The executive director or the board may not disseminate to the public any information directly or indirectly identifying the victim of the following sex crimes: 45-5-502 (Sexual Assault), 45-5-503 (Sexual Intercourse Without Consent), 45-5-504 (Indecent Exposure), or 45-5-507 (Incest), MCA.

(9) The executive director or the board will disseminate research findings to all appropriate parties. The executive director or designee must approve all dissemination of research data. All research dissemination must consider the potential effect of the security and operation of correctional facilities, the public, and the operational integrity of the board. Privacy interests of offenders and other parties for cases under study will be ensured when research projects are considered.

(10) When releasing board records the executive director or the board will consult with board legal counsel when necessary.

(11) The board may charge reasonable copying costs, including an administration fee, for all requested copies of board documents, including an individual offender's parole file.

(12) An offender may request to view his/her individual parole file by making a request in writing to the board executive director. Board staff will provide the offender an opportunity to inspect the file except for information deemed confidential.

(History: 46-23-218, MCA; IMP, 2-6-102, 44-5-311, 46-18-243, 46-23-218, MCA; NEW, 2010 MAR p. 2816, Eff. 12/10/10.)

Subchapter 2

Objectives of Release

20.25.201 OBJECTIVES (1) The principal objective of the board is to affect the release from confinement of appropriate eligible offenders before the completion of the full term of commitment while still fully protecting society. The board may only grant a release when, in the board's opinion, there is a reasonable probability it can release the offender without detriment to the offender or the community. When the board grants a release the offender is subject to the conditions imposed by the board and the supervision authorized by governing statutes, rules, and policies of the department. The board will conduct business fairly and consistently and base decisions on public safety concerns, successful offender reentry, and sensible use of state resources.

(2) An offender must serve the statutorily or court-imposed amount of time before the board may consider the offender for release. Release before the offender serves the entire sentence is a privilege, not a right. The board may only grant a release for the best interest of society and when the board believes the offender is able and willing to fulfill the obligations of a law-abiding citizen and not as an award of clemency or a reduction of sentence or pardon.

(3) The department, after it utilizes its screening process, may transfer an offender from prison to prerelease before the offender is eligible for parole. In the case of such transfer, when the offender is eligible for parole, the board, after review of the entire offender file or summary, will conduct an impartial hearing.

(4) Board members and designated staff will participate in federal, state, and regional criminal justice planning efforts and meet periodically with relevant criminal justice personnel. (History: 46-23-218, MCA; IMP, 46-23-218, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; AMD, 1999 MAR p. 290, Eff. 2/12/99; AMD, 2010 MAR p. 2816, Eff. 12/10/10.)

20.25.202 DEFINITIONS For the purposes of this chapter, these definitions apply:

(1) "Board" means the Board of Pardons and Parole as authorized in 2-15-2302, MCA, the board staff and the board's duly constituted hearing panels.

(2) "Chair" means the person appointed by the governor to serve as the presiding officer of the board.

(3) "Controlling sentence" means the sentence(s) that, based on a district court judgment, requires the longest period of time served to parole eligibility.

(4) "Dead time" means the time an offender is not serving his/her sentence of incarceration either because the offender has absconded or is serving another sentence of incarceration.

(5) "Department" means the Department of Corrections as authorized in 2-15-230, MCA.

(6) "Furlough" means temporary absence from confinement for the purposes authorized by the board.

(7) "Hearing" means the personal appearance of an offender before the board for release consideration, executive clemency, or revocation.

(8) "Hearing panel" means two or three board members assigned by the chair to hear and decide cases of parole, revocation, rescission, administrative review, and clemency.

(9) "Offender" means any person sentenced by a state district court to a term of confinement in a state correctional institution or committed to the department.

(10) "Parole" means the release of an offender into the community prior to the completion of sentence subject to the orders of the board and the supervision of the department.

(11) "Parolee" means a person whom the board has granted parole, who has signed the rules of parole and been given a parole certificate, and whose parole has not been revoked.

(12) "Parole certificate" means the document signed by the board chairman and executive director authorizing the release from confinement to parole.

(13) "Parole eligibility" means the earliest possible date an offender may be released from confinement to parole supervision.

(14) "Prior conviction" means a sentence which the offender has completed.

(15) "Rescission" means an action of the board that annuls or voids a prior release decision.

(16) "Review" means the informal administrative process of considering the conduct and progress of an offender to determine if a reappearance or parole is desirable.

(17) "Rules" means the conditions, limitations, and restrictions upon which parole or furlough is based.

(18) "Sentence" means the penalty imposed by a court for a specific criminal offense.

(19) "Term" means the total period of time, minus applicable good time, that an offender was ordered to serve in prison or committed to the Department of Corrections or the Department of Public Health and Human Services for the commission of a criminal offense.

(20) "Victim" means a person who has suffered loss of property, bodily injury, or reasonable apprehension of bodily injury as a result of the commission of a criminal offense or a member of the immediate family of a person who was killed as a result of a crime. (History: 46-23-218, MCA; IMP, 46-23-218, MCA; NEW, 1999 MAR p. 290, Eff. 2/12/99; AMD, 2010 MAR p. 2816, Eff. 12/10/10.)

Subchapter 3

Eligibility for Parole Consideration

20.25.301 MINIMUM TIME; PERIODIC EVALUATION (REPEALED)

(History: 46-23-218, MCA; IMP, 46-23-201, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; AMD, 1999 MAR p. 290, Eff. 2/12/99; REP, 2010 MAR p. 2816, Eff. 12/10/10.)

20.25.302 PAROLE PLAN (TRANSFERRED)

(History: 46-23-218, MCA; IMP, 46-23-215, 46-23-216, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1999 MAR p. 290, Eff. 2/12/99; TRANS, to 20.25.306, and AMD, 2010 MAR p. 2816, Eff. 12/10/10.)

20.25.302A MEDICAL PAROLE (TRANSFERRED)

(History: 46-23-218, MCA; IMP, 46-23-210, MCA; NEW, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; AMD, 1999 MAR p. 290, Eff. 2/12/99; TRANS, to 20.25. 307, and AMD, 2010 MAR p. 2816, Eff.12/10/10.)

20.25.303 FURTHER ELIGIBILITY (REPEALED)

(History: 46-23-218, MCA; IMP, 46-23-218, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; AMD, 1999 MAR p. 290, Eff. 2/12/99; REP, 2010 MAR p. 2816, Eff. 12/10/10.)

20.25.304 ADDITIONAL CONSECUTIVE SENTENCES (REPEALED)

(History: 46-23-218, MCA; IMP, 46-23-217, 46-18-401, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; AMD, 1999 MAR p. 290, Eff. 2/12/99; REP, 2010 MAR p. 2816, Eff.12/10/10.)

20.25.305 ELIGIBILITY (1) An offender in prison or the state hospital, or an offender whom the prison has placed in prerelease, is eligible for parole unless the offender is under a sentence of death, the sentencing court has made the offender ineligible for parole, or the offender is ineligible for parole by operation of statute. The department shall receive parole eligibility dates for eligible offenders as calculated by the department pursuant to statutory and court-imposed criteria.

(a) An offender committed to the department and placed in prison temporarily for assessment or medical treatment is not eligible for parole.

(b) An offender against whom a detainer or hold is filed is eligible for parole.

(c) An offender committed to the director of the Department of Public Health and Human Services pursuant to 46-14-312, MCA is only eligible for parole when the offender is placed at the Montana State Hospital or in a prison.

(2) If the offender receives a consecutive sentence after reception at prison, but before the board makes an initial ruling on the offender's parole on the original sentence, parole eligibility is determined on the statutory or court-imposed criteria based on the aggregate sum of the original sentence and the consecutive sentence.

(3) If the offender receives a consecutive sentence after reception at prison and after the board makes an initial ruling on the offender's parole on the original sentence, the offender will not be eligible for parole on the consecutive sentence until the offender discharges the original sentence, unless the board orders otherwise. However, the offender remains eligible for parole consideration in regard to the original sentence. The board may allow commencement of the consecutive term for purposes of calculating parole eligibility. If the board allows commencement of the consecutive term, it only changes the parole eligibility calculation, but does not shorten the consecutive term.

(4) An offender who waives his/her parole hearing will have a mandatory parole hearing within six months or as close to six months as scheduling permits. The hearing month will be automatically set and the offender will come before a regularly scheduled hearing panel, unless the offender requests a hearing prior to this date and provides at least 30 days written notice to the board. The board, through its staff, will review all waivers for legitimacy and may accept or reject any waiver. An offender may voluntarily waive two consecutive parole hearings for up to six months each time.

(5) Unless the board otherwise orders, before an offender in a community-based program appears before the board, the offender must have at least 90 days free of severe (Class 100) or major (Class 200) disciplinary violations. An offender in a secure facility must have 120 days free of major disciplinary violations.

(6) Unless the board otherwise orders, an offender incarcerated at a prison must be classified and have been living in an assigned housing unit for a minimum of 60 days before the offender may appear for parole consideration. (History: 46-23-218, MCA; IMP, 46-23-201, 46-23-218, MCA; NEW, 2010 MAR p. 2816, Eff. 12/10/10.)

20.25.306 PAROLE PLAN (1) The board through its pre-parole program, will make available to offenders a copy of a packet outlining the parole process and the recommended treatment release plan. The board, through its staff, may review and amend an offender's recommended parole release plan as necessary and advise the offender when it changes its recommendations.

(2) Each offender who applies for a grant of parole should prepare a comprehensive release plan for the board's consideration. The parole plan should include the following:

- (a) the offender's proposed living situation;
- (b) the offender's proposed gainful employment or other suitable means of support, or a training or schooling program;
- (c) the offender's proposed aftercare programs; and
- (d) the offender's proposed budget for payment of court-ordered fines, fees, restitution, and other financial obligations including child support.

(3) Substantial changes in the parole plan that is submitted at the time of the parole hearing must be reviewed and approved by the board. (History: 46-23-218, MCA; IMP, 46-23-215, 46-23-216, MCA; TRANS, from 20.25.302, and AMD, 2010 MAR p. 2816, Eff. 12/10/10.)

20.25.307 MEDICAL PAROLE (1) Except for an offender under sentence of death or of life imprisonment without the possibility of parole, the board may release on medical parole:

- (a) a Montana offender confined in a prison or the state hospital;
- (b) an offender whom the prison has placed in prerelease or other correctional program; or
- (c) an offender for whom the court has restricted parole for a number of years under 46-18-202(2), MCA, but who has obtained the approval of the sentencing court.

(2) The board, the department, the offender, or the offender's spouse, parent, child, grandparent, or sibling may submit an application for medical parole. The application must contain the following:

- (a) details of the offender's proposed living arrangement on medical parole;
- (b) details of how the offender will acquire and pay for medical care while the offender is on medical parole;
- (c) a report of an examination and written diagnosis by a licensed physician that includes:
 - (i) a detailed description of the offender's medical condition and the medical attention required to treat that condition;
 - (ii) an assessment of the offender's likelihood of recovery;
 - (iii) a description of the offender's most recent past medical condition and treatment; and
 - (iv) an assessment of whether, to a reasonable degree of medical certainty, there is a high probability the offender's medical condition will cause death within six months or less.

(3) The diagnosis must be reviewed and accepted by the department's medical director or designee before the board may hear the case for medical parole.

(4) In order to grant a medical parole the board must find:

- (a) release of the offender is unlikely to pose a detriment to the offender, victim, or community; and
- (b) the offender has a medical condition that requires extensive medical attention or the offender suffers from a medical condition that will likely cause his/her death within six months or less.

(5) In considering whether an offender is likely to pose a detriment to the victim or community, the board may consider:

(a) whether the offender's medical condition renders him/her unable to engage in criminal activity;

(b) any statement submitted by the victim of the offense for which the offender is currently incarcerated;

(c) the progression of the offender's medical condition, as documented by a licensed physician;

(d) the offender's conduct, employment, and attitude in prison;

(e) reports of any physical and mental examinations that have been made;

(f) the offender's previous social and criminal record; and

(g) the circumstances of the offense for which the offender is incarcerated.

(6) In determining whether to grant or deny an application for medical parole, the board may consider whether:

(a) there is support or opposition from the community including the victim or victim's family, the court, or law enforcement;

(b) the offender suffered from the medical condition at the time the offender committed the offense or was sentenced for the offense for which the offender is presently incarcerated and if so, whether the medical condition has progressed to such a degree that it is unlikely that the offender is able to engage in criminal activity;

(c) the care and supervision that the offender requires can be provided in a more medically appropriate or cost-effective manner than by the department;

(d) the offender is incapacitated to an extent that incarceration does not impose significant additional restrictions on the offender;

(e) the offender is likely to continue to suffer from the medical condition throughout the entire period of parole or to die while the offender is on medical parole and there is no reasonable expectation that the offender's medical condition will improve noticeably; and

(f) an appropriate discharge plan has been formulated that addresses basic life domains of the offender, including care coordination, housing, eligibility for public benefits and health care including necessary medication.

(7) The board shall require as a condition of medical parole that the offender agree to placement in a setting chosen by the department during the parole period, including but not limited to a hospital, nursing home, or family home. The board may require as a condition of parole that the offender agree to periodic examinations and diagnosis at the offender's expense. Reports of each examination and diagnosis must be submitted to the board and department by the examining physician. If either the board or department determines that the offender's physical capacity has improved to the extent that the offender is likely to pose a possible detriment to society, the board may revoke the medical parole and return the offender to the custody of the department.

(8) Prior to the medical parole hearing, the board, through its staff, shall gather for the board's deliberations, all pertinent information on the offender, including but not limited to the nature of the offense, social history, criminal history, institutional performance, and any medical and mental examinations which may have been made while in custody.

(9) Upon receiving notification from the department that a medical parolee is eligible for nonmedical parole, the board may consider the offender for nonmedical parole according to the rules established for nonmedical parole consideration.

(10) A grant or denial of medical parole does not affect an offender's eligibility for nonmedical parole. The board will first consider an offender for nonmedical parole if the offender has reached parole eligibility.

(11) If the board denies the application, the department may not accept another application regarding the same offender, unless the offender's medical condition has deteriorated to such a degree that the factors previously considered by the board are affected.

(12) Revocation procedures for medical parole are the same as those for nonmedical parole and statutory provisions for nonmedical parole apply to medical parole.

(13) By submitting an application for medical parole, the offender waives any right to privacy in his/her medical information. (History: 46-23-218, MCA; IMP, 46-23-210, MCA; TRANS, from 20.25.302A, and AMD, 2010 MAR p. 2816, Eff. 12/10/10.)

Subchapter 4

Release Hearings

20.25.401 HEARING PROCEDURE (1) An eligible offender may apply and come before a board hearing panel or an out of state releasing authority for nonmedical parole consideration within two months of time fixed by law as calculated by the prison records department. During the parole hearing the hearing panel will consider all pertinent information regarding each eligible offender including:

(a) the circumstances of the offender's current offense and any other offenses the offender has committed;

(b) the offender's social history and criminal record;

(c) the offender's prison record including disciplinary conduct, work history, treatment programs, classification and placement, and adjustment to prison; and

(d) any physical or psychological reports done on the offender.

(2) The presiding board member shall conduct hearings informally and shall have discretion to allow or not allow any proposed testimony. Board staff shall make a record of all hearings.

(3) Interested persons who wish to appear before the board must:

(a) notify the board staff not less than ten working days prior to the regularly scheduled hearing; and

(b) inform the board staff of the reason they wish to appear before the board and the relationship of the person to the offender at whose hearing the person intends to appear.

(4) Interested persons may submit written comments about an offender's possible parole to board staff at any time before the hearing. The hearing panel will give interested persons' comments due consideration at the offender's hearing.

(5) A victim may present a statement concerning:

(a) the effects of the crime on the victim;

(b) the circumstances surrounding the crime; and

(c) the victim's opinion regarding whether the board should grant the offender parole.

(6) At the presiding hearing panel member's discretion, the victim's statement and testimony will be kept confidential if the presiding member finds the victim's privacy interest outweighs the public's right to know.

(7) The board shall consider the victim's statement along with the other information presented in determining whether to grant parole.

(8) The presiding hearing panel member may close a hearing to hear or consider confidential information.

(a) Information is confidential when the presiding member finds a person's privacy interest outweighs the public's right to know.

(b) When the hearing panel has finished hearing or discussing the confidential information, it shall reopen the meeting and complete the hearing in public.

(9) When the board denies an offender parole, it must give the offender written notification of the decision and include reason(s) for the decision and when the offender may reapply for parole consideration.

(10) The board will consider an eligible offender for parole release even if the offender does not submit an application for parole. The board will render a decision based on the written record and on the fact the offender did not apply for parole.

(11) The board may conduct hearings via two-way interactive video teleconferencing and may conduct administrative reviews by means of telephone conference.

(12) Board hearings are open to the public; however, all persons attending hearings that take place in a secure facility must gain approval to enter the facility from the facility's chief of security or designee as required by the facility's policy. While at the facility, persons must comply with the facility's policies including applicable security policies. The facility may exclude or escort from the facility any person who fails to gain approval to enter the facility or fails to comply with the facility's policies. At the discretion of the hearing panel additional witnesses may be heard outside of the secure facility.

(13) Offenders who appear for parole hearings may have a representative, including an attorney, present with them.

(14) At the conclusion of the hearing, the board will either notify the offender of the board's decision and the reasons for the decision or the board may take the decision under advisement. (History: 46-23-108, 46-23-218, MCA; IMP, 46-23-204, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; AMD, 1999 MAR p. 290, Eff. 2/12/99; AMD, 2010 MAR p. 2816, Eff. 12/10/10.)

20.25.402 ADMINISTRATIVE REVIEW, REAPPEARANCE, AND EARLY REVIEW

(1) After the initial parole hearing, if the hearing panel does not grant a parole it may set a date on which the offender may reappear for a parole hearing. If the hearing panel does not set a reappearance date, an administrative review of the offender's case will be conducted at intervals as outlined below:

(a) The purpose of administrative review is to consider any significant developments or changes in the offender's status that may have occurred subsequent to the last parole consideration; it is not a hearing, but is a review based on the record.

(b) For the administrative review, board staff will submit a report outlining the offender's developments, including the offender's progress and conduct since the last consideration and present the information to the board.

(2) Unless the offender presents good cause for earlier administrative review pursuant to (5), the reviews will be conducted according to the following schedule:

(a) If the offender's prison discharge date is less than five years away, the offender's case will be reviewed no less than annually.

(b) If the offender's prison discharge date is between five and ten years away, the offender's case will be reviewed no less than every three years.

(c) If the offender's prison discharge date is ten or more years away, the offender's case will be reviewed no less than every eight years.

(3) Following an administrative review, the hearing panel in its sole discretion may order no change in the previous parole decision, may schedule the offender to reappear before a hearing panel for a parole hearing, may modify or rescind a previously granted parole, or may grant a parole. If the panel grants a parole, board staff must inform any registered victim.

(4) A hearing panel may not grant a parole upon administrative review to a sexual or violent offender, an offender with a history of felony sexual or violent convictions, or an offender for whom criminal justice authorities or victims have previously objected to parole.

(5) Whenever the scheduled administrative review is over one year away, the offender may submit to board staff a request for early administrative review if the offender can show new information or a change in circumstances that would affect suitability for parole.

(a) The passage of time alone is not considered new information.

(b) The offender may not submit more than one request every six months for earlier administrative review.

(c) Staff will screen the request and determine if one of the following criteria is met:

(i) a change in the offender's status since the last administrative review that would demonstrate that the offender is able and willing to fulfill the obligations of a law-abiding citizen;

(ii) the offender has maintained good conduct and if not, the nature and severity of the misconduct is negligible;

(iii) the offender has completed treatment or educational programs;

(iv) the offender has fulfilled other conditions ordered by the board or has been unable to fulfill them due to factors outside the offender's control;

(v) the board's previous disposition was based on erroneous information or misinformation;

(vi) the offender has developed a suitable release plan or there has been a substantial change in the offender's previous release plan to warrant reconsideration;

(vii) the victim or community no longer objects to the offender's release; or

(viii) correctional staff has made a recommendation for earlier administrative review.

(d) If board staff determines the offender meets one of the above-listed criteria, it will refer the request for early review to the board chair or designee to determine whether to schedule an early review. Board staff may not refer an offender for early administrative review if the offender has been involved in multiple or major misconduct since the board's last hearing or administrative review or the board has specifically prohibited early administrative review.

(e) Board staff will notify the offender in writing if early review has been granted or denied. If the request is denied the notice to the offender will state the reasons for the denial. If the request is granted, the notice will state the date on which the review will be conducted. (History 46-23-218, MCA; IMP, 46-23-218, 46-24-212, MCA; NEW, 2010 MAR p. 2816, Eff. 12/10/10.)

Subchapter 5

Decisions of the Board

20.25.501 DECISION AND RECONSIDERATION (1) A final decision of the hearing panel must be by a majority vote, must be in writing, and must be signed by at least two panel members.

(2) Following the parole hearing, the hearing panel may make any of the following dispositions:

- (a) grant parole;
- (b) grant conditional parole, subject to approval and verification of the parole plan;
- (c) grant conditional parole to occur within a specified time period or upon completion of a contingency, including but not limited to completion of treatment or prerelease, completion of additional clear conduct, or completion of a specific amount of time on the sentence;
- (d) continue the offender to a subsequent reconsideration hearing at an interval not to exceed eight years, during which time the offender is not subject to administrative review;
- (e) schedule an administrative review; and
- (f) pass the offender to discharge if the date of discharge is less than three years away.

(3) If the hearing panel denies the offender parole, the disposition must state the reasons for denial.

(4) The decision of the hearing panel, including reasons for such, will be delivered to the offender and any victims who have requested the board's decision within 21 calendar days of the hearing.

(5) Board staff will post information regarding hearing panel decisions on individual cases on its web site within 21 calendar days of the hearing panel's decision.

(6) If a two-member hearing panel is unable to reach a unanimous decision, the board chairman will convene a panel of three members as soon as practical to reconsider the application.

(7) If the offender can present evidence that the hearing panel's decision was based on erroneous or false information, or that a hearing was not conducted according to board procedure, a newly appointed hearing panel may reconsider the decision.

(a) The offender must submit a written request for reconsideration to the board chair or designee within 60 days following the delivery of the written disposition.

(b) If the offender presents sufficient evidence the chair or designee will forward the case to a hearing panel for its consideration.

(8) A duly constituted hearing panel will make the following administrative decisions at the board's monthly business meeting after panel members have reviewed the offender's case record. These decisions do not require the approval of the members who made the most recent parole determination:

(a) revocation of parole if the offender has waived the hearing;

(b) rescission of previously granted parole;

(c) the addition or deletion of special conditions;

(d) requests for supervision fee waivers;

(e) requests for conditional discharges from supervision; and

(f) a change or modification of a previous hearing panel decision that does not reverse a parole denial or a parole grant decision. (History: 46-23-218, MCA; IMP, 46-23-107, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1999 MAR p. 290, Eff. 2/12/99; AMD, 2010 MAR p. 2816, Eff. 12/10/10.)

20.25.502 FORM AND DELIVERY (REPEALED) History: 46-23-218, MCA; IMP, 46-23-202, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1999 MAR p. 290, Eff. 2/12/99; REP, 2010 MAR p. 2816, Eff. 12/10/10.)

20.25.503 PREFERENCE TO FIRST OFFENDERS (REPEALED) (History: 46-23-218, MCA; IMP, 46-23-218, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; REP, 1993 MAR p. 297, Eff. 2/26/93.)

20.25.504 INVESTIGATION (1) Before a hearing panel considers an offender for release on parole, the board staff will make the following information available for the panel's consideration:

- (a) the offender's previous social history and criminal record;
- (b) the offender's education, conduct, and associations;
- (c) the offender's occupation or prospects for employment;
- (d) the offender's treatment record in prison;
- (e) facts and circumstances of the crime for which the offender was sentenced;
- (f) information received from the community where the crime was committed; and
- (g) any reports of physical or mental examinations which have been made of the offender.

(2) If a hearing panel grants a parole the panel shall request an officer of the department's probation and parole bureau or an out-of-state supervising authority investigate the offender's release plan including victim concerns and give board staff a summary and recommendation concerning the plan. (History: 46-23-218, MCA; IMP, 46-23-107, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; AMD, 1999 MAR p. 290, Eff. 2/12/99; AMD, 2010 MAR p. 2816, Eff. 12/10/10.)

20.25.505 CRITERIA FOR RELEASE GRANT DECISIONS ON NONMEDICAL PAROLE (1) A board hearing panel may release an eligible offender on nonmedical parole only when, in its opinion:

- (a) there is reasonable probability that the offender can be released without detriment to himself/herself or to the community;
- (b) release is in the best interests of society;
- (c) the offender is able and willing to fulfill the obligations of a law-abiding citizen; and
- (d) the offender does not require continued correctional treatment, or mental health therapy, vocational or other programs available in the correctional facility that will substantially enhance the offender's capacity to lead a law-abiding life if released.

(2) In making its determination regarding release, the board hearing panel may consider each of the following factors:

- (a) the offender's maturity, stability, sense of responsibility and development of traits and behaviors which increase the likelihood the offender will conform his/her behaviors to the requirements of law;
 - (b) the adequacy of the offender's release plan;
 - (c) the offender's ability and readiness to assume obligations and undertake responsibilities;
 - (d) the offender's education and training;
 - (e) the offender's family status and whether the offender has relatives who display an interest or whether the offender has other close and constructive associations in the community;
 - (f) the offender's employment history, occupational skills, and the stability of the offender's past employment;
 - (g) the type of residence, neighborhood or community in which the offender plans to live;
 - (h) the offender's past use of chemicals (including alcohol), and past habitual and/or abusive use of such chemicals;
 - (i) the offender's mental and/or physical makeup;
 - (j) the offender's prior criminal record, including the nature and circumstances of the offense, date of offense and frequency of previous offenses;
 - (k) the offender's attitude toward law and authority;
 - (l) the offender's conduct in the institution, including particularly whether the offender has taken advantage of opportunities for treatment, and whether the offender is clear of major disciplinary violations prior to the hearing;
 - (m) the offender's behavior and attitude during any previous experience of supervision and the recency of such experience;
 - (n) any statement of the victim or victims of the offense;
 - (o) whether parole at this time would diminish the seriousness of the offense; and
 - (p) any and all other factors which the board determines to be relevant.
- (History: 46-23-218, MCA; IMP, 46-23-218, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1999 MAR p. 290, Eff. 2/12/99; AMD, 2010 MAR p. 2816, Eff. 12/10/10.)

20.25.506 FURLOUGH (1) When a board hearing panel has granted an offender a parole, it may grant the offender a furlough for the sole purpose of finding employment, making suitable living arrangements, or fulfilling any other board condition that is difficult to fulfill while incarcerated.

(2) Furlough is for ten days, but board staff may grant an extension of up to another consecutive ten-day period to allow the offender to fulfill the furlough purposes.

(3) While on furlough the offender remains in the legal custody of the department and is subject to the department's furlough program rules, standard parole conditions, and any other special conditions recited by the hearing panel.

(4) The offender may be immediately returned to the institution from which the furlough was granted if the offender violates the furlough program rules, any of the standard parole rules, any of the board's special conditions, or if the offender is unable to fulfill the employment, housing, or other furlough conditions.

(5) If the offender violates any of the conditions listed in (4) it is considered a major disciplinary violation and is handled in accordance with the department's disciplinary policy and ARM 20.25.601 concerning rescission.

(6) If the offender successfully fulfills the furlough conditions, the offender must sign the rules of parole and the board will issue a parole certificate. The offender is not officially on parole until the rules are signed and the certificate is issued. (History: 46-23-218, MCA; IMP, 46-23-218, MCA; NEW, 2010 MAR p. 2816, Eff. 12/10/10.)

Subchapter 6

Rescission of Parole

20.25.601 RESCISSION HEARING (1) A board hearing panel may conduct a hearing and rescind a previously granted parole if the offender has not left confinement or is on furlough status and the panel finds one of the following has occurred:

- (a) the offender has committed disciplinary violations;
- (b) there is a substantial change in the approved release plan; or
- (c) new evidence or information shows the offender does not deserve a release.

(2) The panel will make its decision regarding rescission after it has considered all relevant information including the offender's own testimony regarding extenuation or mitigation.

(3) The presiding hearing panel member will conduct the rescission hearing informally and will make a record of it. The offender has the right to be present at the hearing, but may waive that right and admit the allegations are true.

(4) In lieu of scheduling a rescission hearing the board, through its staff, may delay the offender's release from confinement for up to 120 days for the reasons listed in (1).

(5) Unless a board hearing panel otherwise orders, before an offender leaves prison confinement on parole, the offender must be clear of major disciplinary misconduct for a minimum of 120 days. If the offender is a resident of a community-based program, the offender must be clear of Class 100 and 200 disciplinary violations for at least 90 days. (History: 46-23-218, MCA; IMP, 46-23-218, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; AMD, 2010 MAR p. 2816, Eff. 12/10/10.)

20.25.602 PROCEDURE (REPEALED) (History: 46-23-218, MCA; IMP, 46-23-204, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1999 MAR p. 290, Eff. 2/12/99; REP, 2010 MAR p. 2816, Eff. 12/10/10.)

20.25.603 DECISION (REPEALED) (History: 46-23-218, MCA; IMP, 46-23-204, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; REP, 2010 MAR p. 2816, Eff. 12/10/10.)

Subchapter 7

Release on Supervision

20.25.701 RELEASE (1) While on parole release an offender on nonmedical or medical parole is serving the sentence of imprisonment or commitment imposed by the court until the sentence is discharged. The offender must remain under supervision or in custody until the sentence is discharged unless the offender is granted a conditional discharge from supervision pursuant to ARM 20.25.704.

(2) An offender granted a parole is subject to revocation of the release for violation of the law or of any of the conditions of the supervision agreement including conditions imposed by the hearing panel.

(3) Parole is not effective until the conditions are signed by the offender and the board issues the parole certificate. If a violation is established, the board may continue or revoke the parole, or enter such other order as it may see fit. The determination of further release shall be consistent with the rules adopted for release hearings. (History: 46-23-218, MCA; IMP, 46-23-215, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; AMD, 1999 MAR p. 290, Eff. 2/12/99; AMD, 2010 MAR p. 2816, Eff. 12/10/10.)

20.25.702 CONDITIONS OF SUPERVISION (1) When a board hearing panel orders an offender paroled, the offender is subject to the following standard rules unless otherwise ordered by the panel:

(a) The offender must obtain prior approval from his/her supervising officer before taking up residence in any location. The offender shall not change his/her place of residence without first obtaining written permission from his/her supervising officer or the officer's designee. The offender must make the residence open and available to an officer for a home visit or for a search upon reasonable suspicion. The offender will not own dangerous or vicious animals and will not use any device that would hinder an officer from visiting or searching the residence.

(b) The offender must obtain permission from his/her supervising officer or the officer's designee before leaving his/her assigned district.

(c) The offender must seek and maintain employment or maintain a program approved by the Board of Pardons and Parole or the supervising officer. Unless otherwise directed by his/her supervising officer, the offender must inform his/her employer and any other person or entity, as determined by the supervising officer, of his/her status on probation, parole, or other community supervision.

(d) Unless otherwise directed, the offender must submit written monthly reports to his/her supervising officer on forms provided by the probation and parole bureau. The offender must personally contact his/her supervising officer or designee when directed by the officer.

(e) The offender is prohibited from using, owning, possessing, transferring, or controlling any firearm, ammunition (including black powder), weapon, or chemical agent such as oleoresin capsicum or pepper spray.

(f) The offender must obtain permission from his/her supervising officer before engaging in a business, purchasing real or personal property, or purchasing an automobile, or incurring a debt.

(g) Upon reasonable suspicion that the offender has violated the conditions of supervision, a probation and parole officer may search the person, vehicle, and residence of the offender, and the offender must submit to such search. A probation and parole officer may authorize a law enforcement agency to conduct a search, provided the probation and parole officer determines reasonable suspicion exists that the offender has violated the conditions of supervision.

(h) The offender must comply with all municipal, county, state, and federal laws and ordinances and shall conduct himself/herself as a good citizen. The offender is required, within 72 hours, to report any arrest or contact with law enforcement to his/her supervising officer or designee. The offender must be cooperative and truthful in all communications and dealings with any probation and parole officer and with any law enforcement agency.

(i) The offender is prohibited from using or possessing alcoholic beverages and illegal drugs. The offender is required to submit to bodily fluid testing for drugs or alcohol on a random or routine basis and without reasonable suspicion.

(j) The offender is prohibited from gambling.

(k) The offender must pay all fines, fees, and restitution ordered by the sentencing court.

(2) A parolee shall pay a supervisory fee of at least \$10 a month for each month under supervision. A board hearing panel may reduce or waive the fee or suspend the monthly payment if payment would cause the parolee significant financial hardship.

(3) A board hearing panel may order additional special conditions. Additionally, a hearing panel shall consider Department of Corrections' requests for special conditions. Any special conditions imposed by the department must be approved by a board hearing panel. Special conditions must not be unrealistic or vague and must be reasonably related to the offender's crime, public safety, or the circumstances and rehabilitation of the offender.

(4) All rules and conditions must be stated in writing and must be made a part of any agreement signed by the offender.

(5) Any conditions of medical parole ordered by a hearing panel are considered parole special conditions. (History: 46-23-218, MCA; IMP, 46-23-215, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; AMD, 1999 MAR p. 290, Eff. 2/12/99; AMD, 2010 MAR p. 2816, Eff. 12/10/10.)

20.25.703 SPECIAL CONDITIONS (REPEALED) (History: 46-23-218, MCA; IMP, 46-23-215, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1999 MAR p. 290, Eff. 2/12/99; REP, 2010 MAR p. 2816, Eff. 12/10/10.)

20.25.704 CONDITIONAL DISCHARGE FROM SUPERVISION (1) Upon recommendation of the supervising parole officer, a board hearing panel may conditionally discharge a parolee from parole supervision before the expiration of the sentence, if the panel determines that such conditional discharge is in the best interests of the parolee and society, and will not present an unreasonable risk of danger to society or the victim of the offense. However, the board may revoke a parole, even when the parolee is conditionally discharged from supervision, if the parolee violates any laws or ordinances and/or conditions that the board has imposed upon the parolee's conditional discharge.

(2) The parole officer will review the parolee's file and may recommend a parolee for conditional discharge after the parolee has served one year of active supervision. The parole officer will recommend conditional discharge unless a reason exists to continue parole supervision.

(3) When a hearing panel considers granting a conditional discharge from supervision, it will consider the achievement credits the parolee has accrued pursuant to 46-23-1027, MCA.

(4) If a hearing panel grants a conditional discharge from supervision it must order the conditions the parolee must meet while on conditional discharge. At a minimum, the panel must order that the parolee report once a year, report any address or employment changes immediately to the parolee's supervising officer, and report any contacts with law enforcement. The parolee also remains subject to search upon a parole officer's reasonable suspicion the parolee has violated parole.

(5) A board hearing panel may return a parolee to active supervision or amend the conditions of the conditional discharge upon request of the supervising agency, if, in the panel's opinion, this action is in the best interest of society and the parolee. (History: 46-23-218, MCA; IMP, 46-23-215, MCA; NEW, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1999 MAR p. 290, Eff. 2/12/99; AMD, 2010 MAR p. 2816, Eff.12/10/10.)

20.25.705 FINAL DISCHARGE (1) When a parolee has completed the full term of imprisonment or commitment, the board will issue a final discharge certificate. (History: 46-23-218, MCA; IMP, 46-23-215, MCA; NEW, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; AMD, 2010 MAR p. 2816, Eff.12/10/10.)

Subchapter 8

Revocation of Parole

20.25.801 ON-SITE HEARING AND REVOCATION OF PAROLE (1) If an officer of the department has reason to believe a parolee has violated any of the conditions of the parolee's release, the department must conduct an on-site hearing unless the parolee waives the right to an on-site hearing or pursuant to (3), no on-site hearing is necessary.

(2) In order to waive the right to an on-site hearing the parolee must sign a waiver that clearly specifies the rights the parolee is relinquishing and admit to at least one of the violations as outlined in the report of violation.

(3) No on-site hearing is necessary if the parolee is convicted of a felony offense during the period of supervision, or if the parolee is arrested in a state in which the parolee had no permission to travel or reside. If no on-site hearing is necessary the board may utilize the court judgment and conviction or out-of-state arrest documents in lieu of the on-site hearing summary.

(4) Unless the parolee waives the revocation hearing, the board will schedule a revocation hearing within 90 days of receipt of the on-site hearing summary or of receipt of notice of conviction or return to Montana custody. If the parolee waives the revocation hearing the parolee must sign a waiver that clearly specifies the rights the parolee is relinquishing. Once the hearing is scheduled, the parolee may request a continuance and board staff may grant the continuance if the parolee can show good and substantial cause for the continuance.

(5) At the revocation hearing the parolee may be represented by counsel at the parolee's expense, and may present witness testimony if the testimony relates to the violations. An indigent parolee may request appointed counsel if difficult or complex issues are present and if the parolee is unable to articulate the issues. A decision on the request for appointed counsel will be rendered by a board hearing panel after due consideration of the request.

(6) A parolee who contests parole revocation or the parolee's counsel shall, at least 20 days before the revocation hearing, present to the board staff:

(a) any requests for information from the parolee's file that the parolee needs for the hearing;

(b) a list of witnesses and exhibits the parolee intends to present at the revocation hearing;

(c) a list of information the parolee will present at the hearing; and

(d) any requests for subpoenas the parolee wants the board to issue. The board will only issue subpoenas for extraordinary reasons and in cases where the board considers a person's testimony is crucial to a determination of the issue of revocation.

(7) The presiding hearing panel member will conduct the revocation hearing and will record the hearing. The decision of the board in a revocation hearing is by a preponderance of the evidence. The board may consider:

- (a) reports of the supervising officer;
- (b) the report of the on-site hearing, if one was conducted; and
- (c) the information and evidence presented at the hearing.

(8) If the board decides the parolee has violated parole, the hearing panel may, considering the nature of the violations and the criteria for release grant decision, take any of the following actions:

- (a) continue the parolee on parole with release to the community;
- (b) continue the parolee on parole, but authorize the parolee's detention in custody until the parolee satisfies conditions imposed by the board;
- (c) revoke the parole and set no re-parole date;
- (d) revoke the parole, but order the offender's re-parole on a date certain;
- (e) revoke the parole and set a date within one year when a board hearing panel will conduct an administrative review of the offender's case; or
- (f) make any other appropriate order.

(9) The board staff will deliver a copy of the board's written decision to the offender within 21 days of the decision. The written decision will include reasons for the decision and disposition, and a summary of the evidence upon which the board relied.

(10) If a revoked parolee has absconded supervision, a board hearing panel, at its sole discretion, will determine whether the time from the issuing of the violation warrant to the date of the parolee's arrest within the state or return to Montana custody if the parolee was arrested out of state, or any part of that time, will be counted as time served under the sentence, or whether the time was dead time and did not diminish the time the offender had to serve to discharge the sentence.

(11) A parole violation warrant will remain active until the parolee is in Montana custody and may not be quashed without the approval of a board hearing panel. If the parolee's sentence expiration date is reached, a hearing panel will review the case to determine if keeping the warrant active is in the interests of justice. If the panel decides to keep the warrant active after the parole discharge date, not including dead time, a panel will review the parolee's status annually. (History: 46-23-218, MCA; IMP, 46-23-215, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; AMD, 1999 MAR p. 290, Eff. 2/12/99; AMD, 2010 MAR p. 2816, Eff. 12/10/10.)

20.25.802 CONTESTED REVOCATION HEARINGS (REPEALED) (History: 46-23-218, MCA; IMP, 42-23-1025, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1999 MAR p. 290, Eff. 2/12/99; REP, 2010 MAR p. 2816, Eff. 12/10/10.)

20.25.803 EFFECT OF NEW SENTENCE (REPEALED) (History: 46-23-218, MCA; IMP, 42-23-217, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; REP, 1999 MAR p. 290, Eff. 2/12/99.)

Subchapter 9

Executive Clemency

20.25.901 APPLICATIONS FOR CLEMENCY (1) Application forms for executive clemency may be obtained at the board's main office in Deer Lodge, Montana or from the board's web site.

(2) Applications must be in writing, signed by the applicant, notarized, and filed with the board's Deer Lodge office. Applications may be filed only by the offender convicted of the crime, by the offender's attorney acting on the offender's behalf and with his/her consent, or by a court-appointed next friend, guardian, or conservator acting on the offender's behalf.

(a) The applications shall state the type of executive clemency requested; pardon, commutation, respite, or remission of fines or forfeitures.

(b) The application for clemency must include:

(i) a certified copy of all court documents relating to the particulars of the crime and sentencing;

(ii) details concerning the circumstances relating to the social conditions of the applicant prior to the commission of the crime, at the time the offense was committed, and at the time of the application;

(iii) three letters of support from reputable persons;

(iv) psychological reports as requested by the board;

(v) verification that supports the reasons for the applicant's request for executive clemency; and

(vi) a signed waiver of confidentiality.

(3) Unless the board otherwise orders or there has been a substantial change in circumstances, as determined by the board, an offender whose application has been denied may not reapply for executive clemency.

(4) In cases in which the death penalty has been imposed, the application for executive clemency must be received at the board's Deer Lodge office no later than ten days after the district court sets a date of execution.

(5) Any person convicted of a crime after July 1, 1973, will automatically have restored, upon completion of custody and supervision, all civil rights that were lost with the conviction. The person need not apply for executive clemency to have the person's civil rights restored. (History: 46-23-218, MCA; IMP, 42-23-301, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; AMD, 1999 MAR p. 290, Eff. 2/12/99; AMD, 2010 MAR p. 2816, Eff. 12/10/10.)

20.25.901A EXECUTIVE CLEMENCY CRITERIA (1) Pardon is a declaration of record that an individual is to be relieved of all legal consequences of a prior conviction. An individual may not apply for a pardon unless the offense for which he/she seeks a pardon has been commuted or discharged. A board hearing panel may recommend a pardon for an individual who:

- (a) can satisfactorily prove innocence of a crime for which the individual has served time;
- (b) has demonstrated an extended period of exemplary performance;
- (c) submits newly discovered evidence showing complete justification or nonguilt on the part of the individual; or
- (d) can satisfactorily prove extraordinary mitigating or extenuating circumstances exist.

(2) Commutation involves the mitigation of a criminal punishment through the substitution of a lesser sentence for a greater one. A hearing panel may recommend commutation for an individual who:

- (a) can prove by overwhelming evidence the individual is innocent of a crime for which the individual was convicted;
- (b) has demonstrated an extended period of exemplary performance;
- (c) submits evidence discovered subsequent to the conviction that clearly shows the individual was completely justified in committing the crime; or
- (d) can satisfactorily prove that further incarceration would be grossly unfair, that a death penalty should be avoided, or extraordinary mitigating or extenuating circumstances exist.

(3) The board may also recommend to the governor that a respite or a remission of fines or forfeitures be granted.

(4) When considering an application for executive clemency the board hearing panel shall consider the nature of the crime, the comments of the sentencing judge, the prosecuting attorney, the community, and the victims and victims' family regarding clemency for the applicant, and whether release would pose a threat to the public safety. (History: 46-23-218, MCA; IMP, 46-23-301, MCA; NEW, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1999 MAR p. 290, Eff. 2/12/99; AMD, 2010 MAR p. 2816, Eff. 12/10/10.)

20.25.902 INVESTIGATIONS FOR CLEMENCY AND ORDER FOR HEARING

(1) The board staff will conduct a preliminary review of the application for clemency and submit a report to a board hearing panel for its consideration. In cases in which the death penalty has not been imposed the hearing panel, based on the staff's preliminary review, may accept or reject the application. The panel will base its decision to accept or reject an application on:

(a) all the circumstances surrounding the crime for which the applicant was convicted; and

(b) the individual circumstances relating to social conditions of the applicant prior to commission of the crime, at the time the offense was committed, and at the time of the application for clemency.

(2) Upon a hearing panel decision to accept the application, and in all cases in which the death penalty has been imposed, it will request the department to conduct an investigation within 90 days of its request.

(3) Within 90 days of receiving the investigation report, board staff will compile all the information for a hearing panel's consideration. In cases in which the death penalty has not been imposed, board staff will make a recommendation that the panel either reject the application or order a hearing on the application. The panel may require other reports that, in the panel's opinion, are necessary.

(4) In cases in which the death penalty has not been imposed, after receipt of the investigation report, the board staff's recommendation, and any other reports the panel has required, a hearing panel will consider the application and decide whether to deny the application or hold a hearing concerning the application.

(5) If in the opinion of the hearing panel sufficient cause appears to conduct a hearing on the application, and in all cases in which the death penalty has been imposed, the panel will set a date for the hearing and order board staff to give notice of the hearing date as prescribed by law to all concerned including the applicant, law enforcement, the sentencing court, the county attorney in the county in which the crime was committed, and victims of the crime.

(6) If the panel denies the application without a hearing, it will give notice to all concerned. (History: 46-23-218, MCA; IMP, 46-23-301, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; AMD, 1999 MAR p. 290, Eff. 2/12/99; AMD, 2010 MAR p. 2816, Eff. 12/10/10.)

20.25.903 HEARING PROCEDURE FOR CLEMENCY (1) A hearing panel of the board will, after having ordered a hearing and after appropriate notice has been given, conduct a public nonadversarial hearing.

(a) In cases in which the death penalty has not been imposed the hearing panel may hold the hearing via interactive video-conference or telephone conference.

(b) If the hearing takes place in a secure facility, all persons who wish to attend must gain approval to attend from the facility's chief of security or designee as required by facility policy and while at the facility must comply with the facility's policies including applicable security policies. The facility may exclude or escort from the facility any person who fails to comply with the facility's policies. The board has the discretion to hear testimony outside the facility.

(2) The hearing panel that conducts the hearing will hear all relevant facts and information of the petitioner, petitioner's counsel and witnesses, as well as any opponents to the petition, and will make a recording of the hearing including proof of publication of the order for hearing.

(3) Unless a majority of the hearing panel otherwise orders, procedures for the hearing on an accepted application for executive clemency are as follows:

(a) Before the hearing, the presiding hearing panel member will determine an appropriate amount of time for proponents and opponents to present their individual cases and to present closing arguments.

(b) Hearsay is allowed.

(c) The presiding hearing panel member may allow cross examination if he/she finds extraordinary circumstances are present. Hearing panel members may question witnesses in all cases.

(4) Applicants may be represented by counsel at their own expense. An indigent applicant may request counsel if difficult or complex issues are present and if the applicant is unable to articulate the issues. A decision on the request for appointed counsel will be rendered by the presiding hearing panel member after due consideration.

(5) Opponents and proponents of the application may submit written testimony, but it must be received by the board no later than 21 days prior to the scheduled hearing. The hearing panel may request submissions from proponents or opponents. (History: 46-23-218, MCA; IMP, 46-23-306, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1999 MAR p. 290, Eff. 2/12/99; AMD, 2010 MAR p. 2816, Eff. 12/10/10.)

20.25.904 DECISION CONCERNING CLEMENCY (1) Upon conclusion of the hearing the hearing panel will take the entire case under advisement or may issue an immediate decision.

(a) In cases in which the death penalty has not been imposed, if the hearing panel makes a recommendation that the governor grant clemency, it will within 30 days of the decision forward all relevant documents and a proposed executive order to the governor for the governor's final determination. If the panel does not recommend a grant of clemency, it will not forward the application to the governor.

(b) In cases in which the death penalty has been imposed, the board will forward all relevant documents and a recommendation to grant or deny clemency to the governor for the governor's final determination.

(2) The board staff will notify the applicant of the panel's decision in writing within 30 days of the hearing.

(3) If the governor grants executive clemency, the signed executive order will be sent to the Secretary of State. The Secretary of State will file the attested order and return the attested order to the board for dissemination to the applicant, Department of Corrections, Department of Justice, and Federal Bureau of Investigation ID bureau for appropriate action. (History: 46-23-218, MCA; IMP, 46-23-315, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; AMD, 2010 MAR p. 2816, Eff. 12/10/10.)

Subchapter 10

Pardons and Restoration

20.25.1001 POLICY (REPEALED) (History: 46-23-218, MCA; IMP, 46-23-301, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; REP, 1993 MAR p. 297, Eff. 2/26/93.)

20.25.1002 CONTENTS OF APPLICATION FOR PARDON (REPEALED) (History: 46-23-218, MCA; IMP, 46-23-218, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; REP, 1993 MAR p. 297, Eff. 2/26/93.)

20.25.1003 INVESTIGATION (REPEALED) (History: 46-23-218, MCA; IMP, 46-23-218, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; REP, 1993 MAR p. 297, Eff. 2/26/93.)

20.25.1004 CONDUCT OF HEARING (REPEALED) (History: 46-23-218, MCA; IMP, 46-23-218, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; REP, 1993 MAR p. 297, Eff. 2/26/93.)

20.25.1005 DECISION OF THE BOARD (REPEALED) (History: 46-23-218, MCA; IMP, 46-23-218, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; REP, 1993 MAR p. 297, Eff. 2/26/93.)

Subchapter 11

Supervised Release/Furlough Hearings

20.25.1101 CONDUCT OF HEARING (REPEALED) (History: 46-23-218, MCA; IMP, 46-23-412, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; REP, 1993 MAR p. 297, Eff. 2/26/93.)

20.25.1102 APPLICATION (REPEALED) (History: 46-23-218, MCA; IMP, 46-23-411, MCA; NEW, 1993 MAR p. 297, Eff. 2/26/93; REP, 1999 MAR p. 290, Eff. 2/12/99.)

20.25.1102A SUPERVISED RELEASE/FURLOUGH POLICY (REPEALED) (History: 46-23-218, MCA; IMP, 46-23-412, MCA; NEW, 1993 MAR p. 297, Eff. 2/26/93; REP, 1999 MAR p. 290, Eff. 2/12/99.)

20.25.1102B INVESTIGATION (REPEALED) (History: 46-23-218, MCA; IMP, 46-23-412, MCA; NEW, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; REP, 1999 MAR p. 290, Eff. 2/12/99.)

20.25.1103 HEARING PROCEDURE (REPEALED) (History: 46-23-218, MCA; IMP, 46-23-412, MCA; NEW, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; REP, 1999 MAR p. 290, Eff. 2/12/99.)

20.25.1104 DECISION OF THE BOARD (REPEALED) (History: 46-23-218, MCA; IMP, 46-23-412, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; REP, 1999 MAR p. 290, Eff. 2/12/99.)

Rules 20.25.1105 and 20.25.1106 reserved

20.25.1107 REVOCATION OF FURLOUGH (REPEALED) (History: 46-23-218, MCA; IMP, 46-23-218, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; REP, 1993 MAR p. 297, Eff. 2/26/93.)